

House File 2610 - Introduced

HOUSE FILE _____
BY COMMITTEE ON LABOR

(SUCCESSOR TO HSB 717)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the employer=employee relationship by
2 preventing identity theft in the procurement of employment,
3 providing for the employment classification of individuals,
4 and providing penalties and an effective date.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 6463HV 82
7 ak/rj/24

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1 1 DIVISION I
1 2 IDENTITY THEFT
1 3 ARTICLE IX
1 4 IDENTITY THEFT DIVISION
1 5 Section 1. NEW SECTION. 10A.901 DEFINITIONS.
1 6 As used in this article:
1 7 1. "Administrator" means the person coordinating the
1 8 administration of the division.
1 9 2. "Division" means the investigations division of the
1 10 department of inspections and appeals.
1 11 Sec. 2. NEW SECTION. 10A.902 IDENTITY THEFT PREVENTION
1 12 == EMPLOYERS.
1 13 1. a. An employer, as defined in section 91A.2, or the
1 14 employer's designee shall certify under oath or affirmation by
1 15 signing the form described in subsection 2, under penalty of
1 16 perjury under subsection 3, that the employer or the
1 17 employer's designee has examined, within ten business days of
1 18 hiring a new employee, as defined in section 91A.2, to work in
1 19 this state, the driver's license or nonoperator's
1 20 identification card issued by the state of Iowa, Minnesota,
1 21 South Dakota, Nebraska, Missouri, Illinois, or Wisconsin of
1 22 the new employee for facial validity in order to verify the
1 23 new employee's identity.
1 24 b. The employer or the employer's designee shall make a
1 25 photocopy of the new employee's driver's license or
1 26 Iowa-issued nonoperator's identification card. The employer
1 27 or employer's designee shall retain the photocopy of the new
1 28 employee's driver's license or nonoperator's identification
1 29 card and the certified form for the period of the employee's
1 30 employment and for one year after the termination of the
1 31 employee's employment.
1 32 c. (1) An employer may delegate the examination,
1 33 certification, and recordkeeping to a designee, but shall be
1 34 obligated to review and shall remain responsible for the
1 35 designee's actions in paragraphs "a" and "b" relating to
2 1 examination, certification, recordkeeping, and hiring.
2 2 (2) Failure to fulfill the requirements pursuant to
2 3 paragraphs "a" and "b" shall subject an employer or an
2 4 employer's designee to a civil penalty not to exceed one
2 5 thousand two hundred fifty dollars for a first violation as
2 6 determined by the administrator. An employer or employer's
2 7 designee who commits a second violation within six years of
2 8 the first violation shall be subject to a civil penalty not to
2 9 exceed one thousand eight hundred seventy-five dollars as
2 10 determined by the administrator. An employer or employer's
2 11 designee who commits a third or subsequent violation within
2 12 six years of the first violation shall be subject to a civil
2 13 penalty not to exceed three thousand one hundred twenty-five
2 14 dollars as determined by the administrator.
2 15 (3) If the administrator determines an employer's designee
2 16 is responsible for a violation of paragraph "a" or "b" and

2 17 assigns a civil penalty to the designee, the administrator may
2 18 assign a second civil penalty up to the same amount to the
2 19 employer in accordance with the employer's responsibility
2 20 under subparagraph (1).

2 21 2. The division shall prescribe and provide a form that
2 22 the employer or employer's designee shall sign for each new
2 23 employee. The form shall include a statement that the
2 24 employer or the employer's designee has personally certified
2 25 under oath or affirmation that the employer or the employer's
2 26 designee has examined the new employee's driver's license or
2 27 Iowa-issued nonoperator's identification card and determined
2 28 that the license or card was facially valid to the best of the
2 29 employer's or employer's designee's knowledge, information,
2 30 and belief, under penalty of perjury under subsection 3. The
2 31 form shall include a place for the signee to identify whether
2 32 the signee is the employer or the employer's designee. For
2 33 informational purposes for the employer or the employer's
2 34 designee, the form shall include color examples of the back
2 35 and front of driver's licenses and nonoperator's

3 1 identification cards issued by the states of Iowa, Minnesota,
3 2 South Dakota, Nebraska, Missouri, Illinois, and Wisconsin.

3 3 3. a. A person who certifies under oath or affirmation a
3 4 false statement under subsection 1 commits a class "D" felony.

3 5 b. A person who procures or offers any inducement to
3 6 another to certify under oath or affirmation the requirements
3 7 of subsection 1 with the intent that the other will conceal
3 8 material facts commits a class "D" felony.

3 9 4. This section shall not infringe upon the authority of
3 10 the civil rights commission pursuant to chapter 216.

3 11 Sec. 3. NEW SECTION. 10A.903 ENFORCEMENT.

3 12 1. The administrator shall adopt rules pursuant to and
3 13 consistent with chapter 17A regarding investigations to
3 14 determine whether violations of this article or any rule
3 15 adopted pursuant to this article have occurred.

3 16 2. The administrator and inspectors of the division shall
3 17 have jurisdiction for investigation and enforcement in cases
3 18 where employers may be in violation of the requirements of
3 19 this article or rules adopted pursuant to this article.

3 20 3. If, upon investigation, the administrator or the
3 21 administrator's authorized representative believes that an
3 22 employer or an employer's designee has violated this article,
3 23 the administrator shall with reasonable promptness issue a
3 24 citation and civil penalty.

3 25 4. Each citation shall be in writing and shall describe
3 26 with particularity the nature of the violation, including a
3 27 reference to the provision of the statute alleged to have been
3 28 violated.

3 29 5. If a citation is issued, the administrator shall,
3 30 within seven days, notify the employer or employer's designee
3 31 by service in the same manner as an original notice or by
3 32 certified mail of the civil penalty, if any, proposed to be
3 33 assessed.

3 34 6. A determination by the administrator as to whether a
3 35 violation of this chapter or rules adopted pursuant to this
4 1 chapter has occurred shall be considered final agency action.

4 2 7. Judicial review of any final agency action of the
4 3 administrator taken pursuant to this chapter may be sought in
4 4 accordance with the terms of chapter 17A. If a petition for
4 5 judicial review is not filed within thirty days after service
4 6 of the determination of the administrator, the administrator's
4 7 determination shall be conclusive in connection with any
4 8 petition for enforcement which is filed by the administrator
4 9 after the expiration of the thirty-day period. In such case,
4 10 the clerk of court, unless otherwise ordered by the court,
4 11 shall forthwith enter a decree enforcing the order and shall
4 12 transmit a copy of the decree to the administrator and the
4 13 employer or employer's designee named in the petition.

4 14 Sec. 4. NEW SECTION. 10A.904 INTERAGENCY COOPERATION.

4 15 1. All state agencies shall cooperate under this article
4 16 by sharing information concerning employee identity
4 17 verification by employers or employers' designees pursuant to
4 18 this article.

4 19 2. Upon determining that an employer or an employer's
4 20 designee violated section 10A.902, the administrator shall
4 21 notify the appropriate state agencies, each of which shall
4 22 investigate the compliance with other applicable law by the
4 23 employer or employer's designee.

4 24 3. Cooperation under this article shall be considered a
4 25 duty of office for the heads of the state agencies or their
4 26 designees. Failure to so cooperate constitutes a violation of
4 27 section 721.2, subsection 6.

4 28 Sec. 5. Section 321.190, subsection 1, paragraph b, Code
4 29 2007, is amended to read as follows:

4 30 b. The department shall not issue a card to a person
4 31 holding ~~a~~ an Iowa driver's license. However, a card may be
4 32 issued to a person holding a temporary permit under section
4 33 321.181. A card may be issued to a nonresident as otherwise
4 34 prescribed in this section for the purpose of identity

4 35 verification for employment, pursuant to section 91F.1. The
5 1 card shall be identical in form to a driver's license issued
5 2 under section 321.189 except the word "nonoperator" shall
5 3 appear prominently on the face of the card. A nonoperator's
5 4 identification card issued to a person under eighteen years of
5 5 age shall contain the same information as any other
5 6 nonoperator's identification card except that the words "under
5 7 eighteen" shall appear prominently on the face of the card. A
5 8 nonoperator's identification card issued to a person eighteen
5 9 years of age or older but under twenty-one years of age shall
5 10 contain the same information as any other nonoperator's
5 11 identification card except that the words "under twenty-one"
5 12 shall appear prominently on the face of the card.

5 13 Sec. 6. Section 715A.8, subsections 2 and 3, Code 2007,
5 14 are amended to read as follows:

5 15 2. A person commits the offense of identity theft if the
5 16 person fraudulently uses or attempts to fraudulently use
5 17 identification information of another person or fictitious
5 18 person, with the intent to contract for or to obtain credit,
5 19 property, services, employment, or other benefit.

5 20 3. If the value of the credit, property, ~~or~~ services,
5 21 employment, or other benefits exceeds one thousand dollars,
5 22 the person commits a class "D" felony. If the value of the
5 23 credit, property, ~~or~~ services, employment, or other benefits
5 24 does not exceed one thousand dollars or if a value cannot be
5 25 determined, the person commits an aggravated misdemeanor.

5 26 Sec. 7. Section 715A.9, Code 2007, is amended to read as
5 27 follows:

5 28 715A.9 VALUE FOR PURPOSES OF IDENTITY THEFT.
5 29 The value of property, ~~or~~ services, employment, or other
5 30 benefits is ~~its~~ the highest value by any reasonable standard

5 31 at the time the identity theft is committed. Any reasonable
5 32 standard includes but is not limited to market value within
5 33 the community, actual value, or replacement value.

5 34 If credit, property, ~~or~~ services, employment, or other
5 35 benefits are obtained by two or more acts from the same person
6 1 or location, or from different persons by two or more acts
6 2 which occur in approximately the same location or time period
6 3 so that the identity thefts are attributable to a single
6 4 scheme, plan, or conspiracy, the acts may be considered as a
6 5 single identity theft and the value may be the total value of
6 6 all credit, property, ~~and~~ services, employment, or other
6 7 benefits involved.

6 8 DIVISION II

6 9 EMPLOYEE CLASSIFICATION

6 10 Sec. 8. NEW SECTION. 91G.1 PURPOSE.

6 11 The purpose of this chapter is to address the practice of
6 12 misclassifying employees as independent contractors.

6 13 Sec. 9. NEW SECTION. 91G.2 DEFINITIONS.

6 14 1. "Commissioner" means the labor commissioner appointed
6 15 pursuant to section 91.2 or the labor commissioner's designee.

6 16 2. "Construction" means any constructing, altering,
6 17 reconstructing, repairing, rehabilitating, refinishing,
6 18 refurbishing, remodeling, remediating, renovating, custom
6 19 fabricating, maintenance, landscaping, improving, wrecking,
6 20 painting, decorating, demolishing, and adding to or
6 21 subtracting from any building, structure, airport facility,
6 22 highway, roadway, street, alley, bridge, sewer, drain, ditch,
6 23 sewage disposal plant, water works, parking facility,
6 24 railroad, excavation or other project, development, real
6 25 property, or improvement, or to do any part thereof, whether
6 26 or not the performance of the work described in this
6 27 subsection involves an addition to, or fabrication into, any
6 28 structure, project, development, real property, or improvement
6 29 described in this subsection of any material or article of
6 30 merchandise.

6 31 3. "Contractor" means any person, as defined in section
6 32 4.1, engaged in construction. "Contractor" includes general
6 33 contractors, subcontractors, and the state of Iowa and its
6 34 officers, agencies, and political subdivisions.

6 35 4. "Division" means the division of labor services of the
7 1 department of workforce development.

7 2 5. "Interested party" means an individual performing
7 3 services for a contractor who alleges a violation of this

7 4 chapter or a person with an interest in compliance with this
7 5 chapter.

7 6 6. "Performing services" means any constructing, altering,
7 7 reconstructing, repairing, rehabilitating, refinishing,
7 8 refurbishing, remodeling, remediating, renovating, custom
7 9 fabricating, maintenance, landscaping, improving, wrecking,
7 10 painting, decorating, demolishing, and adding to or
7 11 subtracting from any building, structure, airport facility,
7 12 highway, roadway, street, alley, bridge, sewer, drain, ditch,
7 13 sewage disposal plant, water works, parking facility,
7 14 railroad, excavation or other project, development, real
7 15 property, or improvement, or to do any part thereof, whether
7 16 or not the performance of the work described in this
7 17 subsection involves an addition to, or fabrication into, any
7 18 structure, project, development, real property, or improvement
7 19 described in this subsection of any material or article of
7 20 merchandise.

7 21 Sec. 10. NEW SECTION. 91G.3 STATUS OF INDIVIDUALS
7 22 PERFORMING SERVICES.

7 23 1. An individual performing services shall be classified
7 24 as an employee unless all of the following conditions are
7 25 present and are intended to create an independent contractor
7 26 relationship between the individual and the contractor:

7 27 a. The contractor does not control or direct the
7 28 performance of services by the individual.

7 29 b. The contractor is not responsible for the payment of
7 30 the individual's wages.

7 31 c. The contractor does not have the right to discharge or
7 32 terminate the working relationship with the individual.

7 33 d. The contractor is not the authority in charge of the
7 34 work or for whose benefit the individual is providing
7 35 services.

8 1 2. An individual classified as an employee under this
8 2 section shall also be classified as an employee pursuant to
8 3 chapters 85, 85A, 85B, 88, 91A, and 96. A contractor commits
8 4 a violation of this chapter by not treating the individual so
8 5 classified under this chapter as an employee pursuant to
8 6 chapters 85, 85A, 85B, 88, 91A, and 96.

8 7 3. An individual who is an owner-operator as described in
8 8 section 85.61, subsection 11, and not deemed an employee under
8 9 that subsection shall not be classified as an employee under
8 10 this section.

8 11 Sec. 11. NEW SECTION. 91G.4 NOTICE OF LAW.

8 12 1. The commissioner shall create posters in both English
8 13 and Spanish summarizing the requirements of this chapter. The
8 14 English and Spanish versions of the poster shall be posted on
8 15 the division's internet site and on bulletin boards in the
8 16 workforce centers.

8 17 2. The commissioner shall provide the posters without
8 18 charge to contractors upon request.

8 19 3. If a contractor violates section 91G.3 or 91G.8 or
8 20 rules adopted pursuant to any of those sections, the
8 21 contractor shall post the English and Spanish versions of the
8 22 poster created by the commissioner. The posters shall be
8 23 posted in conspicuous locations at the places where notices to
8 24 employees are normally posted at each job site and office of
8 25 the contractor.

8 26 Sec. 12. NEW SECTION. 91G.5 ENFORCEMENT.

8 27 1. An interested party may file a written complaint with
8 28 the commissioner alleging a violation of section 91G.3, 91G.4,
8 29 or 91G.8 or rules adopted pursuant to any of those sections.
8 30 An interested party who makes a complaint when the interested
8 31 party knows such representation to be false commits a simple
8 32 misdemeanor.

8 33 2. The commissioner shall adopt rules pursuant to and
8 34 consistent with chapter 17A regarding investigations to
8 35 determine whether a contractor has violated any provisions of
9 1 this chapter or any rules adopted pursuant to this chapter.

9 2 3. The commissioner shall enforce the provisions of this
9 3 chapter. The commissioner may conduct investigations in
9 4 connection with the administration and enforcement of this
9 5 chapter and may visit and inspect, at all reasonable times,
9 6 any places where individuals are performing services for a
9 7 contractor and may inspect, at all reasonable times, documents
9 8 related to the determination of whether an individual is an
9 9 employee under section 91G.3.

9 10 4. The commissioner and an employee of the commissioner
9 11 shall be indemnified for any damages and legal expenses
9 12 incurred as a result of the good-faith performance of the
9 13 employee's official duties under this chapter, in regard to
9 14 any claim for civil damages not specifically covered by the

9 15 Iowa tort claims Act, chapter 669.
9 16 5. The commissioner may compel by subpoena the attendance
9 17 and testimony of witnesses and the production of books,
9 18 payrolls, records, papers, and other evidence in an
9 19 investigation and may administer oaths to witnesses.
9 20 6. Upon the failure or refusal of any person to obey a
9 21 subpoena, the commissioner may petition a district court of
9 22 competent jurisdiction, and upon proper showing, the court may
9 23 enter an order compelling the witness to appear and testify or
9 24 produce documentary evidence. Failure to obey the court order
9 25 is punishable as contempt of court.
9 26 7. A determination by the commissioner as to whether a
9 27 violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
9 28 pursuant to any of those sections has occurred shall be
9 29 considered final agency action under chapter 17A.
9 30 8. If the commissioner determines upon investigation that
9 31 a violation of section 91G.3, 91G.4, or 91G.8 or rules adopted
9 32 pursuant to any of those sections has occurred, the
9 33 commissioner may do any of the following:
9 34 a. Issue and cause to be served on any party an order to
9 35 cease and desist from any further violation.
10 1 b. Take affirmative or other action as deemed reasonable
10 2 to eliminate the effect of any violation.
10 3 c. Collect the amount of any wages, salary, employment
10 4 benefits, or other compensation denied or lost to an
10 5 individual.
10 6 d. Assess any civil penalty allowed by this chapter.
10 7 e. Refer matters to the county attorney upon determining
10 8 that a criminal violation may have occurred.
10 9 9. Judicial review of any final agency action of the
10 10 commissioner taken pursuant to this section may be sought in
10 11 accordance with the terms of chapter 17A. If a petition for
10 12 judicial review is not filed within thirty days after service
10 13 of the determination of the commissioner, the commissioner's
10 14 determination shall be conclusive in connection with any
10 15 petition for enforcement filed by the commissioner and in such
10 16 case, the clerk of court, unless otherwise ordered by the
10 17 court, shall forthwith enter a decree enforcing the
10 18 commissioner's determination and shall transmit a copy of the
10 19 decree to the commissioner and the contractor named in the
10 20 petition.
10 21 10. A contractor shall not be liable under this chapter
10 22 for any other contractor's failure to properly classify
10 23 individuals.
10 24 11. In any civil action to enforce the provisions of this
10 25 chapter, the commissioner may be represented by an attorney
10 26 employed by the division or, at the commissioner's request, by
10 27 the attorney general.
10 28 Sec. 13. NEW SECTION. 91G.6 PENALTIES.
10 29 1. A contractor who violates section 91G.3, 91G.4, or
10 30 91G.8 or rules adopted pursuant to one of those sections is
10 31 subject to a civil penalty not to exceed one thousand two
10 32 hundred fifty dollars for a first violation as determined by
10 33 the commissioner. A contractor is subject to a civil penalty
10 34 not to exceed one thousand eight hundred seventy-five dollars
10 35 for a second violation occurring within six years of a first
11 1 violation as determined by the commissioner. A contractor
11 2 shall be subject to a civil penalty not to exceed three
11 3 thousand one hundred twenty-five dollars for a third or
11 4 successive violation occurring within six years of a first
11 5 violation as determined by the commissioner.
11 6 2. A contractor who violates any provision of section
11 7 91G.3, 91G.4, or 91G.8 or rules adopted pursuant to one of
11 8 those sections commits a simple misdemeanor. A contractor who
11 9 commits such a second violation within six years of a first
11 10 violation commits a serious misdemeanor. A contractor who
11 11 commits such a third or subsequent violation within six years
11 12 of a first violation commits an aggravated misdemeanor.
11 13 3. A contractor who obstructs the commissioner, the
11 14 employee of the commission, or another person authorized to
11 15 inspect places where individuals are performing services for a
11 16 contractor is subject to a civil penalty not to exceed one
11 17 thousand eight hundred seventy-five dollars.
11 18 4. Each violation described in this section for each
11 19 individual and for each day the violation continues
11 20 constitutes a separate and distinct violation. In determining
11 21 the amount of a civil penalty, the commissioner shall consider
11 22 the appropriateness of the civil penalty to the contractor and
11 23 the gravity of the violation.
11 24 Sec. 14. NEW SECTION. 91G.7 STATE CONTRACT PROHIBITION.
11 25 For a second or subsequent violation of section 91G.3 or

11 26 91G.4 determined by the commissioner to have occurred within
11 27 six years of an earlier violation or for a first or subsequent
11 28 violation of section 91G.8, the commissioner shall add the
11 29 contractor's name to a list to be posted on the division's
11 30 internet site and notify the violating contractor of the
11 31 posting. A state contract shall not be awarded to a
11 32 contractor whose name appears on the list until three years
11 33 have elapsed from the date of the determination of the last
11 34 violation.

11 35 Sec. 15. NEW SECTION. 91G.8 RETALIATION.

12 1 1. A contractor or contractor's agent shall not retaliate
12 2 through discharge or in any other manner against an individual
12 3 for any of the following:

12 4 a. Making a good-faith complaint to the commissioner or to
12 5 a state or federal agency regarding a violation of section
12 6 91G.3 or 91G.4.

12 7 b. Testifying or otherwise cooperating in an investigation
12 8 or proceeding under this chapter.

12 9 2. Such retaliation shall subject a contractor or
12 10 contractor's agent to civil penalties and a prohibition on
12 11 being awarded state contracts pursuant to this chapter and may
12 12 give rise to a private right of action.

12 13 Sec. 16. NEW SECTION. 91G.9 DISPOSITION OF PENALTIES.

12 14 Any penalties assessed and collected by the commissioner
12 15 pursuant to this chapter shall be deposited in the general
12 16 fund of the state.

12 17 Sec. 17. NEW SECTION. 91G.10 PRIVATE RIGHT OF ACTION.

12 18 1. An individual, who has not received compensatory
12 19 damages under section 91G.5, alleging a contractor's violation
12 20 of this chapter or a rule adopted pursuant to this chapter and
12 21 damages may file suit in district court against the
12 22 contractor, in the county where the alleged violation
12 23 occurred, or where any person who is party to the action
12 24 resides, without regard to exhaustion of any alternative
12 25 administrative remedies provided in this chapter. Actions may
12 26 be brought by one or more aggrieved individuals for and on
12 27 behalf of themselves and other individuals similarly situated.

12 28 2. If it is established that an individual has been
12 29 damaged through a proceeding under subsection 1 by a
12 30 contractor who has willfully violated a provision of this
12 31 chapter or a rule adopted pursuant to this chapter, the
12 32 individual shall be entitled to collect the following:
12 33 a. The amount of any wages, salary, employment benefits,
12 34 or other compensation denied or lost to the individual due to
12 35 the violation or a retaliatory action, and court costs and
13 1 interest at the statutory rate from the date of filing.

13 2 b. Punitive damages, not to exceed five times the amount
13 3 awarded in paragraph "a".

13 4 c. Reasonable attorney fees, if the contractor who has
13 5 damaged the individual has committed a second or subsequent
13 6 violation of section 91G.3, 91G.4, or 91G.8, or rules adopted
13 7 pursuant to this chapter, occurring within six years of a
13 8 first violation.

13 9 3. The right of a damaged individual to bring an action
13 10 under this section terminates five years from the date of the
13 11 alleged violation by the contractor.

13 12 Sec. 18. NEW SECTION. 91G.11 COOPERATION.

13 13 1. All state agencies shall cooperate under this chapter
13 14 by sharing information concerning possible misclassification
13 15 by a contractor of one or more of the contractor's employees
13 16 as independent contractors.

13 17 2. Upon determining that a contractor misclassified one or
13 18 more employees as independent contractors in violation of this
13 19 chapter, the commissioner shall notify the division
13 20 administering unemployment insurance services, the division of
13 21 workers' compensation, and the department of revenue, each of
13 22 which shall investigate the contractor's compliance with
13 23 applicable laws.

13 24 3. Cooperation under this chapter shall be considered a
13 25 duty of office for the commissioner or the commissioner's
13 26 designee and the heads of the state agencies named in
13 27 subsection 1 or their designees. Failure to so cooperate
13 28 constitutes a violation of section 721.2, subsection 6.

13 29 Sec. 19. Section 85.61, subsection 11, paragraph b, Code
13 30 Supplement 2007, is amended to read as follows:

13 31 b. (1) "Worker" or "employee" includes an inmate as
13 32 defined in section 85.59 and a person described in section
13 33 85.60.

13 34 (2) "Worker" or "employee" includes an individual who is
13 35 classified as an employee pursuant to section 91G.3.

14 1 Sec. 20. Section 86.45, subsection 2, Code 2007, is

14 2 amended by adding the following new paragraph:
14 3 NEW PARAGRAPH. j. To cooperate with the division of labor
14 4 services, the division of the department of workforce
14 5 development that administers unemployment insurance services,
14 6 and the department of revenue pursuant to chapter 91G by
14 7 sharing information concerning possible misclassification of
14 8 one or more employees as independent contractors.
14 9 Sec. 21. Section 88.3, subsection 4, Code 2007, is amended
14 10 to read as follows:

14 11 4. "Employee" means an employee of an employer who is
14 12 employed in a business of the employer. "Employee" also means
14 13 an inmate as defined in section 85.59, when the inmate works
14 14 in connection with the maintenance of the institution, in an
14 15 industry maintained in the institution, or while otherwise on
14 16 detail to perform services for pay. "Employee" also means a
14 17 volunteer involved in responses to hazardous waste incidences.
14 18 The employer of a volunteer is that entity which provides or
14 19 which is required to provide workers' compensation coverage
14 20 for the volunteer. "Employee" includes an individual who is
14 21 classified as an employee pursuant to section 91G.3.

14 22 Sec. 22. Section 91A.2, subsection 3, unnumbered paragraph
14 23 1, Code 2007, is amended to read as follows:

14 24 "Employee" means a natural person who is employed in this
14 25 state for wages by an employer. Employee also includes a
14 26 commission salesperson who takes orders or performs services
14 27 on behalf of a principal and who is paid on the basis of
14 28 commissions but does not include persons who purchase for
14 29 their own account for resale. "Employee" includes an
14 30 individual who is classified as an employee pursuant to
14 31 section 91G.3. For the purposes of this chapter, the

14 32 following persons engaged in agriculture are not employees:

14 33 Sec. 23. Section 96.11, Code Supplement 2007, is amended
14 34 by adding the following new subsection:

14 35 NEW SUBSECTION. 17. INTERAGENCY COOPERATION.

15 1 a. All state agencies shall cooperate with the director
15 2 and the department pursuant to chapter 91G by sharing
15 3 information concerning possible misclassification of employees
15 4 as independent contractors.

15 5 b. Cooperation under this chapter shall be considered a
15 6 duty of office for the heads of the state agencies named in
15 7 subsection 1 or their designees. Failure to so cooperate
15 8 constitutes a violation of section 721.2, subsection 6.

15 9 Sec. 24. Section 96.19, subsection 18, paragraph a,
15 10 subparagraph (2), Code 2007, is amended to read as follows:

15 11 (2) Any individual who, under the usual common law rules
15 12 applicable in determining the employer=employee relationship,
15 13 has the status of an employee, or any individual who is
15 14 classified as an employee pursuant to section 91G.3, or

15 15 DIVISION III

15 16 CORRESPONDING AMENDMENTS

15 17 Sec. 25. Section 84A.5, subsection 4, Code Supplement
15 18 2007, is amended to read as follows:

15 19 4. The division of labor services is responsible for the
15 20 administration of the laws of this state under chapters 88,
15 21 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91G, 92,
15 22 and 94A, and section 85.68. The executive head of the
15 23 division is the labor commissioner, appointed pursuant to
15 24 section 91.2.

15 25 Sec. 26. Section 91.4, subsection 5, Code Supplement 2007,
15 26 is amended to read as follows:

15 27 5. The director of the department of workforce
15 28 development, in consultation with the labor commissioner,
15 29 shall, at the time provided by law, make an annual report to
15 30 the governor setting forth in appropriate form the business
15 31 and expense of the division of labor services for the
15 32 preceding year, the number of disputes or violations processed
15 33 by the division and the disposition of the disputes or
15 34 violations, and other matters pertaining to the division which
15 35 are of public interest, together with recommendations for
16 1 change or amendment of the laws in this chapter and chapters
16 2 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 91G, 92,
16 3 and 94A, and section 85.68, and the recommendations, if any,
16 4 shall be transmitted by the governor to the first general
16 5 assembly in session after the report is filed.

16 6 DIVISION IV

16 7 SEVERABILITY AND EFFECTIVE DATE

16 8 Sec. 27. SEVERABILITY. The provisions of this Act are
16 9 severable in the manner provided by section 4.12.

16 10 Sec. 28. EFFECTIVE DATE. This Act takes effect January 1,
16 11 2009.

16 12 EXPLANATION

16 13 DIVISION I. This division of this bill creates article 9,
16 14 an identity theft division within the department of
16 15 inspections and appeals that relates to the investigation and
16 16 enforcement of identity theft protections relating to the
16 17 benefit of gaining employment in this state.

16 18 Code section 10A.901 provides definitions.

16 19 Code section 10A.902 requires employers to verify the
16 20 identity of each new employee hired to work in the state by
16 21 examining a driver's license or nonoperator's identification
16 22 card from Iowa, Minnesota, South Dakota, Nebraska, Missouri,
16 23 Illinois, or Wisconsin, for facial validity within 10 business
16 24 days after hiring. The employer or employer's designee must
16 25 certify under oath or affirmation by signing a form under
16 26 penalty of perjury that the license or card was examined. The
16 27 employer or employer's designee is required to photocopy the
16 28 license or card and retain the photocopy and the executed form
16 29 for the duration of the employee's employment and one year
16 30 after the end of the employee's employment. An employer may
16 31 give someone else the authority to hire new employees, examine
16 32 the license or card, and handle recordkeeping duties but the
16 33 employer shall remain responsible for the designee's actions.

16 34 The employer or employer's designee faces civil penalties
16 35 that are detailed in the bill for violations of Code section
17 1 10A.902. If the department of inspections and appeals
17 2 administrator determines that the employer's designee is
17 3 responsible for the violation, the employer may face a
17 4 corresponding civil penalty.

17 5 Code section 10A.902 requires the department of inspections
17 6 and appeals to create a form that the employer or employer's
17 7 designee must sign for each new employee. The form will
17 8 include a statement that the employer or employer's designee
17 9 has personally certified under oath or affirmation under
17 10 penalty of perjury that the employer or employer's designee
17 11 examined an authorized driver's license or nonoperator's
17 12 identification card and determined that the license or card
17 13 was facially valid to the best of the employer's or designee's
17 14 knowledge, information, and belief. The form must indicate if
17 15 the signee is the employer or the employer's designee. The
17 16 form shall include color examples of the front and back of all
17 17 authorized driver's licenses and nonoperator's identification
17 18 cards.

17 19 Code section 10A.902 states that a person who commits
17 20 perjury under Code section 10A.902 commits a class "D" felony.
17 21 Additionally, a person who suborns perjury also commits a
17 22 class "D" felony. A class "D" felony is punishable by
17 23 confinement for no more than five years and a fine of at least
17 24 \$750 but not more than \$7,500. The bill states that the Iowa
17 25 civil rights commission retains full investigative authority
17 26 pursuant to Code chapter 216.

17 27 Code section 10A.903 sets out the enforcement provisions.
17 28 The department of inspections and appeals' administrator will
17 29 investigate and enforce cases where an employer or employer's
17 30 designee violates the requirements of or rules adopted
17 31 pursuant to Code section 10A.902.

17 32 If upon investigation, the department of inspections and
17 33 appeals' administrator believes that an employer or employer's
17 34 designee has violated article 9, the department of inspections
17 35 and appeals' administrator will issue a citation and civil
18 1 penalty. The citation will be in writing and describe the
18 2 nature of the violation. A determination by the department of
18 3 inspections and appeals' administrator as to whether a
18 4 violation of Code section 10A.902 or rules adopted pursuant to
18 5 the Code section has occurred is considered final agency
18 6 action.

18 7 Judicial review of a final agency action by the department
18 8 of inspections and appeals' administrator may be taken within
18 9 30 days according to the terms of Code chapter 17A. If no
18 10 petition for judicial review is filed within 30 days, the
18 11 determination of the department of inspections and appeals'
18 12 administrator is considered conclusive for any petition for
18 13 enforcement that the administrator may file. Upon petition by
18 14 the department of inspections and appeals' administrator, the
18 15 clerk of court, unless otherwise ordered by the court, shall
18 16 enter a decree enforcing the order.

18 17 Code section 10A.904 requires all state agencies to share
18 18 information about employee identity verification. Failure to
18 19 do so is a violation of Code section 721.2(6), which is a
18 20 serious misdemeanor, which could result in confinement for no
18 21 more than one year or a fine of at least \$315 but not more
18 22 than \$1,875.

18 23 Currently an Iowa operator's identification card cannot be

18 24 issued to anyone who has a driver's license from any other
18 25 state. Code section 321.190(1)(b) is amended to continue to
18 26 prohibit only a person with an Iowa driver's license from
18 27 receiving a nonoperator's identification card. The amendment
18 28 allows a card to be issued to a resident with a temporary
18 29 permit or to a nonresident, with or without a non-Iowa
18 30 driver's license, for the purpose of identity verification for
18 31 employment.

18 32 Code section 715A.8(2), which creates the crime of identity
18 33 theft, is amended to include the elements of attempting to
18 34 fraudulently use the identification information of a
18 35 fictitious person to contract for various benefits, including
19 1 to obtain employment. Code section 715A.8(3) is amended to
19 2 include employment and other benefits as value derived from
19 3 committing identity theft and to provide that if identity
19 4 theft is committed but no value can be determined, the person
19 5 commits an aggravated misdemeanor, which is punishable by
19 6 confinement for no more than two years and a fine of at least
19 7 \$625 but not more than \$6,250.

19 8 Code section 715A.9 is amended to include employment and
19 9 other benefits for determining the value derived from
19 10 committing identity theft.

19 11 DIVISION II. This division of the bill creates Code
19 12 chapter 91G and relates to the classification of individuals
19 13 as employees or independent contractors.

19 14 Code section 91G.1 addresses the purpose of the chapter.

19 15 Code section 91G.2 includes definitions pertinent to the
19 16 chapter.

19 17 Code section 91G.3 classifies the status of individuals
19 18 performing services. Code section 91G.3(1) provides the
19 19 criteria for determining the status of an individual as an
19 20 employee. Code section 91G.3(2) provides that an individual
19 21 classified as an employee under this Code section also
19 22 qualifies as an employee for the purposes of Code chapters 85,
19 23 85A, and 85B (workers' compensation), 88 (occupational safety
19 24 and health), 91A (wage payment collection), and 96
19 25 (unemployment compensation). It is a violation of Code
19 26 chapter 91G to fail to properly classify an individual as an
19 27 employee under these Code chapters. Code section 91G.3(3)
19 28 provides that an individual who is an owner-operator as
19 29 described in Code section 85.61(11) shall not be classified as
19 30 an employee under Code section 91G.3.

19 31 Code section 91G.4 requires the commissioner to create
19 32 posters in both English and Spanish that summarize the Code
19 33 chapter requirements. If a contractor is found to have
19 34 violated Code sections 91G.3 or 91G.8, the contractor must
19 35 post the posters in both languages in conspicuous places at
20 1 all job sites and offices.

20 2 Code section 91G.5 provides enforcement provisions. In
20 3 Code section 91G.5(1), an interested party may file a written
20 4 complaint alleging a violation of this Code chapter. However,
20 5 a party who knowingly makes a false complaint commits a simple
20 6 misdemeanor, which is punishable by confinement for no more
20 7 than 30 days or a fine of at least \$65 but not more than \$625
20 8 or by both. Under Code section 91G.5(2), the commissioner is
20 9 charged with establishing rules consistent with Code chapter
20 10 17A. In Code section 91G.5(3), the commissioner is charged
20 11 with investigating complaints and conducting investigations.

20 12 Under Code section 91G.5(4), the commissioner and employees
20 13 are indemnified for damages and legal expenses incurred as a
20 14 result of the good-faith performance of their job duties
20 15 against any claims not covered by Code chapter 669, the Iowa
20 16 tort claims Act. Under Code section 91G.5(5), the
20 17 commissioner may administer oaths and issue subpoenas to
20 18 access witnesses and documents, payroll records, and other
20 19 evidence in order to advance an investigation. Code section
20 20 91G.5(6) allows the commissioner or the commissioner's
20 21 investigators to commence a contempt action in court
20 22 commanding a person to obey the order of the commissioner
20 23 issued under Code chapter 91G or be adjudged guilty of
20 24 contempt of court.

20 25 Under Code section 91G.5(7), a determination by the
20 26 commissioner about whether a violation has occurred is final
20 27 agency action. Under Code section 91G.5(8), when the
20 28 commissioner determines there has been a violation, the
20 29 commissioner may take specific actions, including cease and
20 30 desist, individual compensatory, and civil penalty remedies.

20 31 Under Code section 91G.5(9), judicial review of a final
20 32 agency action by the commissioner may be instituted within 30
20 33 days according to the terms of Code chapter 17A. If no
20 34 petition of review is filed within 30 days, the commissioner's

20 35 findings are considered conclusive for any petition for
21 1 enforcement that the commissioner may file. Upon petition by
21 2 the commissioner, the clerk of the court, unless otherwise
21 3 ordered by the court, shall enter a decree enforcing the
21 4 order.

21 5 In Code section 91G.5(10), a contractor is not responsible
21 6 for any other contractor's failure to properly classify
21 7 individuals who perform services for the contractor. In Code
21 8 section 91G.5(11), in a civil action, the commissioner may
21 9 choose to be represented by a departmental attorney or the
21 10 attorney general.

21 11 Code section 91G.6 deals with the penalties. In Code
21 12 section 91G.6(1), a contractor who violates this Code chapter
21 13 or any rule adopted pursuant to this Code chapter shall be
21 14 subject to a civil penalty not to exceed \$1,250 for the first
21 15 violation, up to \$1,875 for a second violation within six
21 16 years of the first, and up to \$3,125 for a third or successive
21 17 violation within six years of the first violation.

21 18 Under Code section 91G.6(2), a contractor who violates any
21 19 provision of this Code chapter or any rule adopted pursuant to
21 20 this Code chapter commits a simple misdemeanor, which is
21 21 punishable by confinement for no more than 30 days or a fine
21 22 of at least \$65 but not more than \$625 or by both. A
21 23 contractor who commits a second violation within a six-year
21 24 period commits a serious misdemeanor, which is punishable by
21 25 confinement for no more than one year and a fine of at least
21 26 \$315 but not more than \$1,875. A contractor who commits a
21 27 third or subsequent violation within a six-year period commits
21 28 an aggravated misdemeanor, which is punishable by confinement
21 29 for no more than two years and a fine of at least \$625 but not
21 30 more than \$6,250. Under Code section 91G.6(3), any contractor
21 31 who obstructs the commissioner's inspection of places of
21 32 employment shall be liable for a civil penalty of up to
21 33 \$1,875. Under Code section 91G.6(4), each violation for each
21 34 individual and for each day the violation continues
21 35 constitutes a separate and distinct violation. In determining
22 1 the amount of a penalty, the commissioner shall consider the
22 2 appropriateness of the penalty to the contractor and the
22 3 gravity of the violation.

22 4 Code section 91G.7 provides that if a contractor is found
22 5 to have violated a provision of Code section 91G.3 or 91G.4 a
22 6 second or subsequent time within six years of an earlier
22 7 violation or is found to have violated, for a first or
22 8 subsequent time, Code section 91G.8, the contractor's name
22 9 shall be posted on the division's internet site. A state
22 10 contract shall not be awarded to a contractor whose name
22 11 appears on the posting until three years have passed from the
22 12 date of the last violation determination.

22 13 Code section 91G.8 makes it a violation of the Code chapter
22 14 for a contractor or a contractor's agent to retaliate in any
22 15 way against an individual for making a good-faith complaint or
22 16 cooperating in an investigation. Retaliation subjects the
22 17 contractor to civil penalties, to being banned from state
22 18 contracts, and a possible private right of action.

22 19 Under Code section 91G.9, any civil penalties collected by
22 20 the commissioner shall be deposited in the general fund of the
22 21 state.

22 22 In Code section 91G.10, if an individual has not received
22 23 compensatory damages under Code section 91G.5, then the
22 24 individual who is damaged by an alleged Code chapter 91G
22 25 violation may file suit in district court in the county where
22 26 the alleged violation occurred or where any person who is
22 27 party to the violation resides and may do so without
22 28 exhausting any alternative administrative remedies in Code
22 29 chapter 91G. If it is established that an individual has been
22 30 willfully damaged through a proceeding under Code section
22 31 91G.10, remedies include compensatory damages, court costs and
22 32 interest, and punitive damages up to five times the amount of
22 33 the compensatory damages and court costs. If the contractor
22 34 who has damaged the individual has committed a second or
22 35 subsequent violation of this Code chapter, reasonable attorney
23 1 fees may be awarded. The right to bring a private action
23 2 terminates five years after the date of the alleged violation.

23 3 Code section 91G.11(1) requires all state agencies to
23 4 cooperate by sharing information about possible
23 5 misclassifications by contractors. Under Code section
23 6 91G.11(2), the commissioner shall notify the other agencies
23 7 when a misclassification violation is determined, and the
23 8 other agencies shall investigate. Code section 91G.11(3)
23 9 makes cooperation and investigation among the heads of the
23 10 state agencies a duty of office; failing to cooperate,

23 11 pursuant to Code section 721.2(6), results in a serious
23 12 misdemeanor, which is punishable by confinement for no more
23 13 than one year or a fine of at least \$315 but not more than
23 14 \$1,875.

23 15 The definition of "employee" in new Code section 91G.3 is
23 16 essentially incorporated as part of the definitions of
23 17 "employee" in the following amended Code sections: 85.61,
23 18 86.45, 88.3, 91A.2, and 96.19.

23 19 Code section 96.11 is amended by adding a new subsection
23 20 for interagency cooperation. The subsection requires all
23 21 state agencies to cooperate by sharing information about
23 22 possible misclassifications of employees by contractors.
23 23 Cooperation and investigation among the heads of the state
23 24 agencies is considered a duty of office; failing to cooperate,
23 25 pursuant to Code section 721.2(6), results in a serious
23 26 misdemeanor, which is punishable by confinement for no more
23 27 than one year or a fine of at least \$315 but not more than
23 28 \$1,875.

23 29 DIVISION III. In Code sections 84A.5 and 91.4 the division
23 30 of labor of the department of workforce development is given
23 31 responsibility for administration for new Code chapter 91G and
23 32 filing of annual reports about matters pertaining to these
23 33 Code chapters, respectively.

23 34 DIVISION IV. The provisions of the bill are severable as
23 35 provided by Code section 4.12.

24 1 The bill takes effect January 1, 2009.

24 2 LSB 6463HV 82

24 3 ak/rj/24